

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ADAM V STENNIS and) CASE NO. 06-62207 JPK
KATHLEEN J STENNIS,) Chapter 13
Debtors.)

ORDER REGARDING MOTION TO ALLOW TRUSTEE SIGNATURE TO SUBSTITUTE FOR
CREDITOR SIGNATURES ON INSURANCE CHECK ("MOTION")

The Motion was filed on October 29, 2008. It was accompanied by the filing of a form of notice apparently intended to implicate N.D.Ind.L.B.R. B-2002-2's "drop-dead" procedures with respect to the relief requested by the motion.

The court first notes that the relief requested by the motion is not within the parameters of N.D.Ind.L.B.R. B-2002-2. Perhaps one might argue that insurance proceeds as a result of casualty to property of a bankruptcy estate fall within the scope of the definition of "cash collateral" under 11 U.S.C. § 363(a), and that thus the Motion relates to "cash collateral". However, under N.D.Ind.L.B.R. B-2002-2(a)(g), there is no provision for a "drop-dead" procedure with respect to the use of cash collateral; rather, subparagraph (a)(2) of that rule provides for a "drop-dead" procedure with respect to agreements relating to the use of cash collateral, which is not the case here. Thus, the "drop-dead" notice filed as record entry No. 77 has no effect whatsoever in this case.

The Motion states in essence that the debtors' homeowner's insurance carrier issued a draft for loss experienced by the debtors as a result of flooding which occurred in Northwest Indiana in September of 2008. The Motion states that the draft was issued in the names of the debtors, the Chapter 13 Trustee, the primary mortgage holder with respect to the debtor's residence (CitiMortgage), and the second mortgage holder Citibank. The Motion states nothing with respect to the debtor's intended use of the proceeds of the insurance draft. The Motion states nothing with respect to the loss for which the draft was issued— was it with respect to

damage to real property, or with respect to contents of the real property, or with respect to some other matter? The Motion on its face in essence seeks a blank check—literally—by which the proceeds of an insurance policy are made available to the debtors without restriction on the use of those proceeds in any manner.

The court derives from the motion that the insurance draft was issued as a result of a loss to real property in which both CitiMortgage and Citibank have mortgage interests. The ability to utilize proceeds of insurance with respect to this loss depends upon the terms of the agreements between the debtors and their two mortgage lenders, which cannot be modified by operation of 11 U.S.C. § 1322(b)(2)/1322(b)(5). The Motion does not in any manner refer to covenants and agreements between the debtors and their mortgage lenders as to the utilization of these insurance proceeds: those covenants control the manner in which the debtors may utilize proceeds of insurance represented by the draft.

The court appreciates the difficulty which debtors, in the circumstances here encountered, have with dealing with mortgagees, particularly in light of the potential for assignment of mortgages by the original mortgagees to servicers, actual assignees, and the like. However, the simple fact remains that the use of the insurance proceeds is governed by the original contracts between the debtors and their mortgagees. The simple fact is also that the debtors have not proposed any use for the proceeds apart from requesting that the insurance draft be endorsed so that the proceeds can become available for apparently whatever use the Trustee and the debtors have determined.

Viewed in terms of the relief requested by the Motion, the Motion seeks solely an order that allows the Trustee to endorse an insurance draft on behalf of CitiMortgage and Citibank. The court understands that the debtors are attempting to obtain use of insurance proceeds in some manner, and that they may have encountered difficulty with CitiMortgage and Citibank with respect to that use. However, apart from the fact that the ultimate use of the proceeds is

not addressed by the Motion, there is no authority known to the court which allows substituting the Chapter 13 Trustee as an endorser of the check on behalf of the mortgage holders.

Limited strictly to the relief requested by the motion and the grounds stated for that relief, the motion must be denied.

IT IS ORDERED that the Motion is DENIED.

Dated at Hammond, Indiana on December 11, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee